Supreme Court, U. S.
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No. 80-803

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GREENAWALT, CHARLES E., LOCAL UNION NO. 764, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TEAMSTERS JOINT COUNCIL NO. 53, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,
Petitioners,

v.

PAWLAK, JOHN A. AND STAFFORD, JAMES,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITIONERS' REPLY BRIEF

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Petitioners have posed the question of whether Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(4), precludes a union from recovering its expenses from a member who filed a lawsuit against the union prior to exhausting available internal union remedies, and the case having

been dismissed for that reason, under the following narrow circumstances: 1) the union's constitution requires exhaustion of internal union remedies prior to resorting to the judiciary; 2) those internal union remedies have been found by a court to be adequate; 3) the union's constitution specifically authorizes collection of its expenses from the member; and, 4) the union makes no effort to enforce its constitutional provision until after a court has determined that the member had an obligation to exhaust the available internal union procedures.

Petitioners do not attempt to distinguish the instant case from *NLRB* v. *Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418 (1968), as Respondents have argued. In that case, this Court focused on the question of whether a member "could be expelled for filing [a] charge with the [National Labor Relations] Board without first having exhausted 'all remedies and appeals within the Union' . . ." and concluded "that the overriding public interest makes unimpeded access to the Board the only healthy alternative, *except and unless plainly internal affairs of the union are involved.*" *Id.* at 422, 424 (emphasis added). This Court held "that where the complaint or grievance does not concern an internal union matter, but touches a part of the public domain covered by the Act, failure to resort to any intra-union grievance procedure is not ground for expulsion from a union." *Id.* at 428.

The majority of the Court did not specifically address the propriety of imposition of discipline in cases in which "internal union matters" were brought to the judiciary before internal union remedies had been exhausted. The narrow question posed by Petitioners has never been directly addressed by this Court or by the courts of any circuit other than the courts in the instant case.

The issue presented by this petition will not be affected by any decision rendered by this Court in *ITT Gilfillian*

v. *Clayton*, No. 80-54 or *Clayton* v. *UAW*, No. 80-5049, *cert. granted*, 49 U.S.L.W. 3332 (Nov. 3, 1980). Those cases only pose the question of the applicability of the defense of failure to exhaust internal union remedies to suits brought under Section 301 of the National Labor Relations Act, 29 U.S.C. § 185. Resolution of that question would not resolve the controversy in the instant case or future cases in which a member sued his union without first exhausting internal union remedies. Indeed, both *Operating Engineers Local 3* v. *Burroughs*, 417 F.2d 370 (9th Cir. 1969), *cert. denied*, 397 U.S. 916 (1970), and *Ross* v. *IBEW*, 544 F.2d 1022 (9th Cir. 1976), arose from disputes over the conduct of local union elections of officers and were totally unrelated to Section 301. Thus, even were this Court to rule that the exhaustion of internal union remedies doctrine had no application in Section 301 suits, the question presented by this petition would still have to be addressed. In fact, the question raised here would be even more important because union constitutional provisions similar to the one at issue here would only be applied to suits over "internal union matters" which do not touch any "part of the public domain covered by the [National Labor Relations] Act."

CONCLUSION

For the reasons set forth in the petition and above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: December 10, 1980